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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/027,671	02/23/1998	ALAN K. SMITH	4292-0048-55	3507
22850	7590	10/06/2003	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SAUNDERS, DAVID A	
		ART UNIT	PAPER NUMBER	
		1644	34	

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/027,671	<b>Applicant(s)</b> SMITH ET AL.
<b>Examiner</b> David A Saunders, PhD	<b>Art Unit</b> 1644	
<i>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--</i>		
<p><b>THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</b>            Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>		
<b>PERIOD FOR REPLY [check either a) or b)]</b>		
<p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>		
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>		
<p>1. <input checked="" type="checkbox"/> A Notice of Appeal was filed on <u>17 March 2003</u>. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p>		
<p>2. <input checked="" type="checkbox"/> The proposed amendment(s) will not be entered because:</p>		
<p>(a) <input checked="" type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input checked="" type="checkbox"/> they raise the issue of new matter (see Note below);</p> <p>(c) <input checked="" type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p>		
<p>NOTE: <u>See Continuation Sheet</u>.</p>		
<p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p>		
<p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p>		
<p>5. <input type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.</p>		
<p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p>		
<p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input checked="" type="checkbox"/> will not be entered or b)<input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p>		
<p>The status of the claim(s) is (or will be) as follows:</p>		
<p>Claim(s) allowed: _____.</p>		
<p>Claim(s) objected to: _____.</p>		
<p>Claim(s) rejected: <u>6-12,38-45,47 and 48</u>.</p>		
<p>Claim(s) withdrawn from consideration: _____.</p>		
<p>8. <input type="checkbox"/> The proposed drawing correction filed on _____ is a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner.</p>		
<p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.</p>		
<p>10. <input type="checkbox"/> Other: _____.</p>		

Continuation of 2. NOTE: Amended claim 38 would be confusing as to what is achieved in the culturing method; the newly recited result of being "differentiated to at least a point where they are programmed to develop into a specific type of cell" would be encompassed by the state of being "lineage committed" as recited at the start of the culturing; thus it is not clear that the method accomplishes anything in terms of enhancing a "biological function". It is also not clear whether "being differentiated to a point where they are programmed to develop into specific type of cell" constitutes the "enhanced biological function" per se or some function in addition thereto.

Claim 42 would require consideration of new matter, as to whether or not the disclosure supports the recited combinations of lineage committed hematopoietic cells with the other cell types.

Claims 44-45 would require further consideration as to whether any or all of the recited Markush group members fall within the rubric of "lineage committed hematopoietic cells" or not.

*David A. Saunders*  
DAVID SAUNDERS  
PRIMARY EXAMINER  
ART UNIT 182 1644